



# City of Las Cruces<sup>®</sup>

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 15 Resolution # 10-015 Council District: All

For Meeting of July 6, 2009  
(Adoption Date)

**A RESOLUTION APPROVING THE BUS SERVICE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND NEW MEXICO STATE UNIVERSITY FOR THE TERM OF AUGUST 1, 2008 TO MAY 31, 2010.**

**PURPOSE(S) OF ACTION:** To approve amendments and extensions to the Aggie Transit Service Agreement to cover service provided in the 2008-2009 academic year and to be provided in the 2009-2010 academic year.

Name of Drafter: Michael Bartholomew <i>MB</i>		Department: Public Services / Transit		Phone: 541-2500	
Department	Signature	Phone	Department	Signature	Phone
Originating Department	<i>[Signature]</i>		Budget	<i>[Signature]</i>	2300
			Assistant City Manager	<i>[Signature]</i>	
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:** The City of Las Cruces has had an agreement since December 2, 1985 with New Mexico State University (NMSU) to provide a campus shuttle service. The most recent agreement was approved by Council on January 7, 2008 and expired December 31, 2008.

Beginning in the fall semester of 2008, the level of service provided by the City for Aggie Transit was expanded to include a total of three routes. This expansion was phased in where the City provided all drivers and one bus for the fall 2008 semester then for the spring semester the City provided all drivers and all buses.

By mutual agreement, both the City and NMSU would like to amend this agreement to reflect the new level of service being provided and to clarify NMSU's participation in vehicle replacement. Additionally, the agreement will now be with the NMSU administration instead of with the Associated Students of NMSU. The term of the agreement will be from August 1, 2008 to May 31, 2010 to cover both the past and upcoming academic years in which this new level of service is being provided.

This agreement generates approximately \$200,000 per school year. It covers the entire cost of two of the Aggie Transit routes. Consistent with agreements dating back to 1986, NMSU is credited some federal funding for the third route that is provided.

**SUPPORT INFORMATION:**

<b>Fund Name / Account Number</b>	<b>Amount of Revenue</b>	<b>Budget Amount</b>
NMSU Bus Subsidy FY2010 5920 – 59680010- 543711	\$204,411	\$204,411

1. Resolution
2. Exhibit "A", agreement extending the current bus service agreement to May 31, 2010.

**OPTIONS / ALTERNATIVES:**

1. Approval of the Resolution to amend the service agreement with NMSU thereby continuing a long standing transit partnership with NMSU.
2. Not approve the Resolution to amend the service agreement with NMSU which would jeopardize continuing service to NMSU.
3. Modify the Resolution and provide alternative direction to Staff to pursue other options specified by Council.

**A RESOLUTION APPROVING THE BUS SERVICE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND NEW MEXICO STATE UNIVERSITY FOR THE TERM OF AUGUST 1, 2008 TO MAY 31, 2010.**

The City Council is informed that:

**WHEREAS**, the City has maintained a bus service agreement with the Associated Students of New Mexico State University since December 2, 1985; and

**WHEREAS**, the term of the most recent agreement expired on December 31, 2008; and

**WHEREAS**, service levels were expanded by mutual agreement August of 2008; and

**WHEREAS**, the City and New Mexico State University wish to extend the terms of the existing agreement and amend the language to insure a continuity of service and to reflect the additional service being provided.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT** the City, by amendment of Paragraph No. 1 of the existing agreement, extends and amends the term of the agreement from August 1 2008 to May 31, 2010.

**(II)**

**THAT** City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

(SEAL)

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:

*[Handwritten Signature]*  
\_\_\_\_\_  
Deputy City Attorney

**BUS SERVICE AGREEMENT**

**THIS AGREEMENT** is hereby entered into between the City of Las Cruces, a municipal corporation, hereinafter referred to as "the City," and New Mexico State University, hereinafter referred to as "NMSU."

WHEREAS, the City operates RoadRUNNER Transit as a public benefit mass transit system under authorization as a federal Section 5307 provider; and

WHEREAS, the City has been operating transit service for NMSU since 1986; and

WHEREAS, the continuation of transit services on the university campus will provide an important benefit to NMSU residents and students and visitors to the City; and

WHEREAS, NMSU desires to renew its Bus Service Agreement with the City to provide such transit services; and

WHEREAS, on December 2, 1985, the City and NMSU entered into a Joint Powers Agreement (JPA) for such transit services, which was amended by the terms of a bus service agreement entered into on November 3, 1989 and renewed on July 13, 1992, February 14, 1996, January 1, 2001, May 2, 2005, and January 7, 2008

NOW, THEREFORE, in consideration of the mutual obligations and covenants herein expressed, the parties agree as follows:

**1. TERM OF AGREEMENT**

This Agreement shall be from August 1, 2008 until May 31, 2010, subject however to paragraph No. 3.

**2. TRANSPORTATION SERVICES TO BE PROVIDED BY CITY**

- A. **Determination of Services to be Provided**—In consideration of the payments by NMSU to the City, as provided in paragraph No. 4, the City or its agents agree to provide transit service in accordance with routings and schedules to be negotiated with NMSU representatives. The City and NMSU representatives shall agree to service levels for the next academic semester prior to the end of the previous semester.
- B. **Service Period**—Unless otherwise requested, NMSU transit services shall operate for the entirety of the spring and fall University semesters. Services will operate Monday through Friday, when classes are in session, holidays excepted.

- C. **Vehicles and Drivers** — Effective the fall semester 2008, the City shall provide ADA accessible vehicles and drivers to operate one route of transit service on campus. Additionally the City will provide drivers to operate two (2) additional campus routes with buses provided by NMSU. The City will provide buses for all three campus routes beginning or before the start of the Spring 2009 semester. The City will utilize spare vehicles from its fleet as back up to assure the operation of service, conditioned upon spare vehicle availability. If additional transit service is requested by NMSU (more than three routes), the operation of that service will be contingent upon vehicle availability. If it is necessary to purchase additional vehicles in order to operate a request for additional service, these vehicles will be purchased using the procedures outlined in paragraph No. 5, Capital Program requirements.
- D. **Customer Information**—Provide current public/customer information relative to the services to be provided.
- E. **Reports**—Provide periodic reports during the academic year as requested and regarding ridership, use of paratransit services as well as operational conditions. An annual report will be included with the billing at the end of each academic year.
- F. **Schedule Performance**—The City shall exercise due diligence in adhering to all published time schedules, but minor deviations due to variations in traffic, weather, or road conditions shall not be deemed to be default hereunder.
- G. **Schedules**—Transit service shall run as agreed to by the parties subject to the availability of equipment.

### 3. TERMINATION

- A. This Agreement is contingent upon both parties receiving appropriations to carry out its terms. If during the term of this Agreement, either party receives insufficient appropriations, said party may terminate this Agreement by giving ninety (90) days written notice of its intent to terminate this Agreement due to insufficient appropriations.
- B. This Agreement may also be terminated by either party upon 30 days advance written notice from one party to the other.
- C. In case of termination by either party, NMSU shall pay to the City a pro rata share of its subsidy level as determined pursuant to paragraph No. 4B.

### 4. CONSIDERATION AND METHOD OF PAYMENT

- A. In consideration of the agreements contained herein, NMSU shall pay to the City a cost reimbursement calculated pursuant to this paragraph. In determining the total reimbursement due herein, the following cost calculations shall be used:
- (1) **Part-time Seasonal Bus Operators**—The hourly rate times the actual hours employed driving or being trained for operation of the contracted service, will determine the reimbursement rate for the part-time seasonal bus operators used to provide this service. The current hourly wage rate, plus applicable federal and State of New Mexico required benefits, will be used for the period that the service is provided.
  - (2) **Maintenance/Operating Costs**—the vehicle operating costs will be calculated using the number of actual miles per semester, multiplied by the cost per actual mile. The National Transit Database (NTD) Reporting System prepared in accordance with Federal Transit Administration (FTA) regulations will be the source of financial and non-financial operating data. The reimbursement for operating expenses will be based on cost per actual mile using NTD Operating Expenses MB Form 301 and MB Service Form 406. Vehicle operator labor costs will not be included in calculating the operating subsidy. Administrative costs, including administrative labor, will be included in the cost per actual mile.
  - (3) **FTA Assistance**—FTA section 5307 assistance for the Las Cruces MSA will be a certain proportion of the actual costs incurred by the City for Transit operations in any given year for one (1) route. The same proportion for the assistance provided to the City will be applied to the actual costs for the contracted University service. Credit for FTA assistance shall not exceed 50% of the operating cost of one route. NMSU will be responsible for the full cost of additional routes.
  - (4) **Increases in Operating Costs**—If the City determines prior to the start of a given semester of any contract year that the projected subsidy amount will exceed the prior year's actual subsidy by 5%, the City will inform NMSU in writing no later than thirty days prior to the beginning of the given semester.
- B. **Payment**—Payment from NMSU to the City for transit services operated under this Agreement shall be made at the end of each semester. The request for payment will be submitted to:
- NMSU Auxiliary Services**  
**Attn: Assistant Vice President for Auxiliary Services**  
**PO Box 30004, MSC 3AUX**  
**Las Cruces, NM 88003-8004**

The request for payment will be made no later than 30 days following the end of the semester. Payment shall be due and payable within thirty (30) days following receipt of invoice by NMSU. If this Agreement is terminated as herein provided, the City shall be entitled to a pro rata share of that annual payment based on the service rendered during the academic year in which this Agreement is terminated.

- C. **Other Liability**—Under no circumstances shall NMSU be liable for any monies for any reason other than the Maximum Subsidy Level set forth in paragraph No. 5A.
- D. **Payment Location**—Payment against invoices shall be mailed to the Transit Department, P. O. Box 20000, Las Cruces, NM 88004.
- E. **Annual Estimate of Cost of Service** – The City shall provide an estimate of the cost of service for each academic school year prior to the beginning of the fall semester.

## 5. CAPITAL PROGRAM REQUIREMENTS

The City will work with NMSU to identify capital requirements to operate this service, which will result in a capital equipment replacement plan. Capital requirements will include vehicles, stop signs, passenger shelters and/or benches. Capital requirements will be handled as follows:

- A. **Vehicles**—The City has committed to provide three buses for Aggie Transit. The City will identify and attempt to secure federal funding for any replacement vehicles required to continue to operate these transit services. NMSU commits to assisting the City with financing the local match requirements for replacement vehicles needed to insure continued operation of the service. It is anticipated that two vehicles will be due for replacement in 2012 and one more in 2016, This commitment is in lieu of charging annual vehicle depreciation costs in this agreement. For planning purposes, vehicles will be replaced at the approved federal life cycle for the type of vehicle being used. The City will act as the purchasing agent in acquiring all vehicles, which are to be purchased with federal grant funds..

Any vehicles purchased by the City to operate service under the Agreement using FTA funds authorized to the City will remain the property of the City if this Agreement is terminated.

- B. **Bus Stop Signs**—will be installed and maintained by NMSU after safe bus stop locations have been jointly identified. The exceptions would be for any signage to be placed on city streets would be the responsibility of the City.

- C. **Shelters/Benches**—The City and NMSU will work together to identify locations appropriate for installing benches and/or shelters to accommodate intending passengers. The City will work with NMSU to identify possible funding sources to pay for capital and installation costs associated with benches and shelters. Shelters and benches on the NMSU campus will be funded by NMSU.

## 6. **INDEPENDENT CONTRACTOR RELATIONSHIP**

In providing and furnishing said transit service during the term hereof, the City shall act solely in the capacity of an independent contractor, and not as an agent or employee of NMSU, and NMSU shall have no control over the City's transit operations in connection with providing said services, except as hereinabove provided, and NMSU shall have no control or supervision whatsoever over the drivers of the vehicle(s) used in said service who shall be employed by the City.

## 7. **MAINTENANCE/EQUIPMENT REPAIR**

The City agrees to maintain all vehicles used in providing the service in a safe, efficient, and lawful manner, and in so doing, shall comply with all applicable state and FTA requirements for the preventive and regular maintenance of transit equipment. Any physical damage to vehicles purchased for or by NMSU to operate services established herein shall be repaired by the City in a timely and high quality manner using the same standards that are applied to the City's current 5307 operation, regardless of cause.

## 8. **INDEMNIFICATION**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act or other New Mexico law.

## 9. **APPLICABLE LAW**

The City agrees that it will adhere to all federal, state, and local laws applicable to the provision of the services outlined herein.

The City will not be liable for a decision by NMSU to operate transit service that does not comply with Title VI and/or transportation requirements established under the Americans with Disabilities Act and will not be obligated to operate such service.

## 10. **ACCOUNTING**

The City and NMSU shall provide strict accounting for all receipts and disbursements, if any, made pursuant to the Agreement. The City will furnish accounting reports to NMSU upon request.

**11. REPRESENTATIVES**

Any notice required under this Agreement shall be mailed to the following addresses, except as changed by written notice to the other party. As well, the City hereby designates the persons listed below as the City representatives to be responsible for daily supervision of the operation of service:

**CITY:** City Manager  
P. O. Box 20000  
Las Cruces, New Mexico 88004

Transit Administrator or City Manager's Designee  
P. O. Box 20000  
Las Cruces, NM 88004  
(505) 541-2500  
Fax (505) 541-2545

**NMSU:** Assistant Vice President of Auxiliary Services at NMSU or designee  
P. O. Box 30001, MSC 3AUX, Corbett Center Rm 317  
Las Cruces, New Mexico 88003-8001

ASNMSU President or ASNMSU  
President's Designee  
P. O. Box 30001, MSC 7110  
Las Cruces, New Mexico 88003-8001

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**12. BINDING EFFECT**

This Agreement is binding upon the City and NMSU and their respective assignees, successors in interest, and legal representatives of any kind.

**13. ENTIRE AGREEMENT**

- A. This agreement embodies the entire agreement between the City and NMSU and may only be amended upon a written agreement signed by the parties.
- B. This Agreement incorporates all the conditions, agreements and understandings between the parties concerning the subject matter of this agreement and all such conditions, understandings, and agreements have been merged into this written agreement. No prior condition, agreement, or other understanding verbal or otherwise, shall be valid or enforceable unless embodied in this agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2009 pursuant to the approval of their respective governing bodies.

**CITY OF LAS CRUCES:**

\_\_\_\_\_  
Terrence R. Moore, City Manager

**FOR THE REGENTS OF  
NEW MEXICO STATE UNIVERSITY:**

  
\_\_\_\_\_  
Mike Abernethy, Director of  
Procurement Services & Risk  
Management

**ATTEST:**

\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Travis Dulany, ASNMSU Student Body  
President

(SEAL)

Approved as to form:

\_\_\_\_\_  
City Attorney